

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

NOV 7 1974

FILE: B-162311

DATE: NOV 7 1974

MATTER OF: Thomas J. Strenger - Waiver of erroneous
overpayments of salary

DIGEST: Overpayment of salary, to civilian employee because of step increase from GS-7, step 5, to GS-7, step 6, prior to completing 104 weeks of service, as required by 5 U.S.C. § 5335(a)(2), is waived in accordance with 5 U.S.C. § 5584 since employee questioned propriety of step increase and was assured by supervisor it was proper.

This action is in response to the letter of Mr. Thomas J. Strenger, dated September 16, 1974, appealing the determination of our Transportation and Claims Division, dated August 22, 1974, partially denying a waiver of erroneous overpayments of salary under the provisions of 5 U.S.C. § 5584. ✓

The record shows that Mr. Strenger, a civilian employee of the Department of the Army, was promoted effective December 20, 1970, from GS-5, step 9, to GS-7, step 5, the equivalent of three steps of the grade from which promoted instead of to the proper rate, GS-7, step 4, which would have been the equivalent of two steps of the grade from which promoted. Mr. Strenger was also granted a step increase from GS-7, step 5, to GS-7, step 6, effective December 19, 1971, only one year from the date of his previous promotion. This step increase was not proper since 5 U.S.C. § 5335(a)(2) provides that the waiting period for advancement from step 5 to step 6 is 104 calendar weeks from an employee's last equivalent increase. These errors were apparently detected when Mr. Strenger was promoted to GS-9, step 1, effective August 13, 1972, and corrective adjustments made as of that date. Accordingly, the period of overpayment was from December 20, 1970, through August 12, 1972, for a total of \$673.72. The Department of the Army recommended that the overpayments be waived. Our Transportation and Claims Division, in its determination of August 22, 1974, waived the overpayments resulting from placing Mr. Strenger in step 5 of GS-7 rather than step 4 upon promotion amounting to \$292.92. However, the Division denied waiver of the additional overpayment of \$380.60 due to the premature step increase on the ground that a reasonable and prudent Federal employee knows or should know the waiting periods for advancement

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to steps above the first step of each grade. In addition, the Division held that the claimant knew or should have known that the payroll change slip authorizing the increase incorrectly listed the date of his last equivalent increase as December 21, 1969, instead of December 20, 1970. Mr. Strenger is appealing this portion of the Division's settlement.

The authority to waive erroneous overpayments of pay and allowances is found in 5 U.S.C. § 5584. Subsection b of that statute provides that the authority may not be exercised by the Comptroller General:

"(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim * * *."

Implementing the statutory provision cited above, section 91.5 of title 4, Code of Federal Regulations, provides, in part, for waiver of an erroneous payment whenever:

"(c) Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim. Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials. Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case. * * *"

In his letter of September 16, 1974, Mr. Strenger stated that he knew he was not due a step increase in December 1971, but felt

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he was entitled to a grade increase by the normal rate of growth in his position. However, he certified in his request for waiver that he was not aware of the 2-year limitation on step increases from step 5 to step 6. In explanation of this discrepancy Mr. Strenger states that his supervisor advised him that, although the Wage and Price Freeze imposed by the President of the United States on August 15, 1971, had ended, promotions were still frozen but step increases were not. Subsequently, Mr. Strenger was given a step increase from GS-7, step 5, to GS-7, step 6, effective December 19, 1971. His payroll change slip authorizing the step increase indicated, in item 10, that his last equivalent increase was December 21, 1969, when it was actually December 20, 1970. Mr. Strenger states in his letter that he inquired about the step increase but was told to "not worry about it."

The question arises as to whether Mr. Strenger was at fault in accepting the overpayment. In regard to the requirement that there be no indication of fault, we stated in B-165663, June 11, 1969, that:

"Whether an employee who receives an erroneous payment is free from fault in the matter can only be determined by a careful analysis of all pertinent facts, not only those giving rise to the overpayment but those indicating whether the employee reasonably could have been expected to have been aware that an error had been made. If it is administratively determined that a reasonable man, under the circumstances involved, would have made inquiry as to the correctness of the payment and the employee involved did not, then, in our opinion, the employee could not be said to be free from fault in the matter and the claim against him should not be waived."

Mr. Strenger states that he inquired about the step increase. His application for waiver does not indicate this, but he states further that he was not permitted to develop his argument on his application form. He claims that his personnel office limited his statement of cause to "administrative error beyond my control."

In the present case there is no specific indication of fault or lack of good faith on the part of the claimant. Unlike the employee involved in an analogous decision, B-174301, October 22, 1971,

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UNITED STATES GOVERNMENT
 DEPARTMENT OF THE ARMY
 OFFICE OF THE COMPTROLLER GENERAL

the claimant here does not have a lengthy service history in positions of responsibility with the Federal Government, which bears on the reasonableness of his action at the time of his step increase. Our previous denial in that case, imputing at least partial fault on the employee's part, was based on a determination that a reasonable and prudent Federal employee knows or should know the waiting periods between step increases and should at least make inquiry about an increase not in accord with his length of service in that step. The matter is not free from doubt in this case, but since Mr. Stranger did inquire about the increase and was told by his supervisor that it was not erroneous, we do not believe that fault should be imputed to him under the circumstances of the present case.

Accordingly, the overpayments totaling \$380.80 are hereby waived under the authority of 5 U.S.C. § 5584. *

R. P. KEENE
 Comptroller General
 of the United States

DEBT COLLECTIONS

Waiver

- Civilian employees
- Compensation overpayments
- Periodic step increases

11-11-51

The claimant here does not have a lengthy service history in the position of responsibility with the Federal Government, which bears on the responsibility of his action at the time of his step increase. Our procedure would be to issue a determination of fault on the employee's part, not based on a determination that a reasonable and prudent Federal employee knows or should know the existing criteria between step increases and should at least have inquired about an increase not in accord with his length of service in that step. The matter is not free from doubt in this case, but since Mr. Strasser did inquire about the increase and was told by his supervisor that it was not erroneous, we do not believe that fault should be placed on him under the circumstances of the present case.

Accordingly, the overpayments totaling \$386.30 are hereby waived under the authority of 5 U.S.C. § 5584.

Very truly yours,
 Comptroller General
 of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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The Honorable J. Glenn Beall, Jr.
United States Senate

Dear Senator Beall:

Further reference is made to your letter of September 23, 1974, with enclosures, on behalf of Mr. Thomas J. Strenger, concerning the August 22, 1974, action of our Transportation and Claims Division denying waiver of an amount that was overpaid to him as a result of an administrative error.

Upon reconsideration of the matter we have by decision B-182311 of this date, copy enclosed, waived the indebtedness under the provisions of 5 U.S.C. § 5584.

We are happy that we can report an action favorable to your constituent.

Sincerely yours,

Acting R.F. KELLER
Comptroller General
of the United States

Enclosure

RELEASED

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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Lieutenant General Howard W. Penney, USA
Director, Defense Mapping Agency
Building 56, United States
Naval Observatory
Washington, D.C. 20305

Dear General Penney:

Further reference is made to your letter of November 5, 1973, with enclosures, reference U-3212/CMV, concerning waiver of the claim of the United States against Mr. Thomas J. Strenger, an employee of the Department of the Army, arising out of erroneous payments of compensation.

Mr. Strenger has appealed the action taken by our Transportation and Claims Division in letter to you dated August 22, 1974, partially denying waiver of his claim and holding him indebted in the amount of \$380.80. Upon reconsideration we have waived the cited indebtedness by decision of this date, B-182311, copy enclosed.

Sincerely yours,

R.F.KELLER

Acting Comptroller General
of the United States

Enclosure.

RELEASED

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Director, TCB (General Claims)

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Comptroller General R.P. KELLER

Waiver of Debt - Thomas J. Strenger - B-182311-O.M.

Returned herewith is file Z-2530382 forwarded for our consideration on September 23, 1974, in connection with the claimant's request for review of your determination that he was indebted in the amount of \$180.80.

By decision of today, B-182311, copy attached, the Government's claim for overpayment of salary has been waived.

Attachments - 2